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EDWARD BRINLEY ADAMS, Librarian of the Law School, died suddenly at his home in Cambridge on March 24. The Library was to Mr. Adams, as a colleague has said, a romantic passion. To his broad scholarship, to his fine appreciation of the possible influences of a library on the changing substance of the law, to his intense devotion, the library owes much of its preëminent position. In his death the school and the profession have suffered a deep and irreparable loss. The Review, of which Mr. Adams was a former editor, mourns in him one of its most loyal and steadfast supporters. To those who were privileged to know him there has been in addition the loss of a gentle and charming friend.

THE EFFECT OF FEDERAL ADMIRALTY JURISDICTION ON WORKMEN'S COMPENSATION ACTS. — In *Southern Pacific Company* v. *Jensen*,[1] the United States Supreme Court held that the New York Workmen's Compensation Act did not apply to a stevedore injured on a ship. In this case two circumstances existed: (1) the employee's contract was

[1] 244 U. S. 205 (1917). Subsequent to this decision a federal statute was passed, "saving to claimants the rights and remedies of the workmen's compensation law of any state." This statute was held unconstitutional. Knickerbocker Ice Co. *v.* Stewart, 253 U. S. 149 (1920).

maritime, and (2) his injury was maritime in nature.[2] In *Grant Smith-Porter Co.* v. *Rhode*,[3] on the other hand, where the contract of employment was non-maritime, and the injury was maritime, the Supreme Court held that the Oregon Workmen's Compensation Act[4] was applicable. Aside from the question of the soundness of these decisions, it is highly desirable to determine the principles of distinction involved so as to ascertain just what cases are excluded from the operation of the various compensation statutes by the federal grant of admiralty power.

The Workmen's Compensation Acts may be roughly divided into those which are compulsory upon the employer and employee, and those which are elective.[5] When the parties elect to come under the provisions of the latter type of statute, it is generally held that its provisions become a term of the contract of employment and recovery for the injury is accordingly on the basis of contract.[6] Under the compulsory statute, it might reasonably be argued that since the parties can exercise no option whether or not to come under the provisions of the act, liability is on the basis of tort.[7] But in New York and California it is held that recovery, under their compulsory statutes, while not strictly contractual, is based on a duty attaching to the relation which arises from the contract and is accordingly "*quasi ex contractu.*"[8] The effect of the *Jensen* and *Rhode* decisions on cases arising under each of these types of statutes must be considered.

The *ratio decidendi* of the *Jensen* decision was that "no such legislation

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[2] In subsequent cases similar circumstances existed. See Clyde S. S. Co. *v.* Walker, 244 U. S. 255 (1917); Chelentis *v.* Luckenbach S. S. Co., 247 U. S 372 (1918); Knickerbocker Ice Co. *v.* Stewart, 253 U. S. 149 (1920).

[3] U. S. Sup. Ct., Oct. Term, 1921, No. 35. For the facts of this case see RECENT CASES, *infra*, p. 762.

[4] See 1920 OLSON'S OREGON LAWS, § 6605; OREG. LAWS 1913, c. 112.

[5] Elective acts are in force in 31 states and Alaska; compulsory acts are in force in 12 states, Hawaii and Porto Rico. For an analysis of the principal features of these statutes, see BULLETIN OF UNITED STATES BUREAU OF LABOR STATISTICS, No. 272, pp. 27-68.

[6] See 1 BRADBURY, WORKMEN'S COMPENSATION, 3 ed., 86-97; E. Angell, "Recovery under Workmen's Compensation for Injury Abroad," 31 HARV. L. REV. 619. This question generally arises in connection with the extraterritorial effect of the statutes. In the following cases it was held that the basis of recovery was contractual and hence that recovery could be had for injuries suffered without the state. Grinnell *v.* Wilkinson, 39 R. I. 447, 98 Atl. 103 (1916); Foughty *v.* Ott, 80 W. Va. 88, 92 S. E. 143 (1917); Hagenbeck & Great Wallace Shows Co. *v.* Leppert, 66 Ind. App. 261, 117 N. E. 531 (1917); Anderson *v.* Miller Scrap Iron Co., 169 Wisc. 106, 170 N. W. 275 (1919). In Gould *v.* Sturtevant, 215 Mass. 480, 102 N. E. 693 (1913), it was held that the statute had no extraterritorial effect but the court did not decide whether recovery under the statute was on the basis of tort or of contract. See BRADBURY, *op. cit.* p. 88. Even though the statute be construed as giving contractual recovery, it may be limited to injuries within the state. See Union Bridge & Construction Co. *v.* Industrial Comm., 287 Ill. 396, 122 N. E. 609 (1919).

[7] As used in this note the term "tort" includes any recovery which is not contractual or *quasi*-contractual. Recovery under the so-called Employers' Liability Acts may properly be considered of this nature. See Baltimore & O. S. W. Ry. Co. *v.* Read, 158 Ind. 25, 62 N. E. 488 (1902); Alabama G. S. R. Co. *v.* Carroll, 97 Ala. 126, 11 So. 803 (1892); see E. Angell, *supra*, 31 HARV. L. REV. 632.

[8] See Smith *v.* Heine Safety Boiler Co., 224 N. Y. 9, 119 N. E. 878; Quong Ham Wah Co. *v.* Industrial Accident Commission, 192 Pac. 1021 (Cal. 1920). *Cf.* Post *v.* Burger & Gohlke, 216 N. Y. 544, 111 N. E. 351 (1916). See E. Angell, *supra*, 31 HARV. L. REV. 635.

is valid if it . . . works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations." [9] If the statute imposes a tort liability it is clear that in its application to non-maritime injuries, it does not fall within this inhibition, since the right to legislate concerning such injuries is not included in the federal grant of admiralty jurisdiction. But the trend of the decisions in the state courts [10] and the reasoning of the *Jensen* case [11] indicate that such a statute cannot apply to maritime injuries. Here then the outcome depends upon the *situs* of the injury.

In the great majority of cases, however, the statute operates as an incident of the contract of employment. Should a distinction be made where this incident is voluntarily assumed under an elective, and where it is imposed under a compulsory, statute? It is arguable that under the former type of statute, the state has not changed admiralty law but the parties have themselves voluntarily relinquished maritime rights and remedies and substituted those provided by the statute. But the argument that there has been no interference by the state is considerably weakened not only by the fact that usually the parties are bound unless there is an affirmative rejection, but especially by the fact that the statutes provide as an alternative to acceptance by the employer a threatened deprivation of defenses, to some of which he is clearly entitled by admiralty law.[12] At any rate the courts have regarded as immaterial the fact that the statute is elective rather than compulsory.[13] Nor did the court lay stress on the elective feature of the statute in the *Rhode* case. This as a possible distinction between it and the *Jensen* case must therefore be discarded.

The proper criterion to be applied under the statutes allowing contractual recovery seems to be the nature of the contract entered into by the parties. The contract on which recovery was allowed in the *Rhode* case was non-maritime. There was no basis for the argument, therefore, that the statute imposed new and burdensome obligations on a mari-

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[9] 244 U. S. 205, 216.

[10] See Rorvick *v.* No. Pacific Lbr. Co., 99 Oreg. 59, 190 Pac. 331, 195 Pac. 163 (1921) Under the Washington compulsory Workmen's Compensation Act, recovery is apparently allowed for all non-maritime injuries but not for maritime injuries. See BULLETIN INDUSTRIAL INSURANCE DEPARTMENT, WASH., May, 1920, p. 2; BULLETIN DEPARTMENT OF LABOR & INDUSTRIES, WASH., May, 1921, p. 4.

[11] The court did not decide whether the Workmen's Compensation Act involved allowed recovery on the basis of contract or of tort, but held it inapplicable since both the contract of employment and the injury were maritime.

Many statutes of the type here under consideration would not have the disturbing effect on navigation which seemed to influence the court in the Jensen case. See 244 U. S. 217. But the important consideration in these cases seems to be not the effect of the statute on *navigation* but its effect on *maritime law*. Thus a state statute creating a lien on a vessel enforceable *in rem* in a state court is valid if the cause of action is non-maritime. The Winnebago, 205 U. S. 354 (1907); Cordrey *v.* The Bee, 201 Pac. 202 (Oreg. 1921). See 35 HARV. L. REV. 613.

[12] See Kennedy *v.* Cunard S. S. Co., 197 App. Div. 459, 189 N. Y. Supp. 402 (1921).

[13] See Duart *v.* Simmons, 231 Mass. 313, 121 N. E. 10 (1918); Soderstrom *v.* Curry & Whyte, 143 Minn. 154, 173 N. W. 649 (1919); O'Brien *v.* The Scandinavian Line, 94 N. J. L. 244, 109 Atl. 517 (1920); Lawson *v.* N. Y. & P. R. S. S. Co., 148 La. 290, 86 So. 815 (1921); Berry *v.* Donovan & Sons, Inc., *infra*, note 15, *contra*.

time contract.[14] The rights and remedies existing under the various compensation acts are admittedly not uniform throughout the United States. If the statutes carry this lack of uniformity into admiralty law, the result is considered objectionable whether recovery be on the basis of tort or of contract. If they do not, there can be no objection. Hence if the rights arise from a non-maritime contract and are accordingly enforceable only in common law courts or statutory commissions, the statute may properly apply.[15] It is true that in this case as well as in the case of a maritime contract the statute may deprive the injured workman of a maritime tort claim. The result of the *Rhode* case is, therefore, to sanction such a deprivation in the case of non-maritime contracts.

It may happen that the workman although employed under a non-maritime contract is, at the time of the injury, actually performing maritime labor.[16] But since the nature of the contract is decisive, it follows that this, as well as the fact that his injury itself may be maritime,[17] is immaterial. Conversely, if the contract of employment is maritime no recovery may be had under the act, even though the type of work being performed at the time of the injury, or even the injury itself,[18] is non-maritime. It may be objected that this latter proposition results in the doctrine that the federal grant of admiralty jurisdiction prevents the states from changing the law relating to non-maritime torts. But the statute held inapplicable is *ex hypothesi* regulating not the law of torts, but the rights and obligations arising from a maritime contract of employment. The distinction drawn by the court between statutory regulation of such a contract and of a non-maritime contract as in the *Rhode* case is therefore justifiable; though as an original question the soundness of the decision in the *Jensen* case may well be questioned.

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[14] See So. Pac. Co. *v.* Jensen, *supra*, at p. 217. This would also dispose of the second objection to recovery in the Jensen case: *viz.*, that recovery in a state court on a maritime cause of action must be such as "the common law is competent to give." See 244 U. S. 218.

[15] The Supreme Court of Maine by an ingenious line of reasoning recently reached the result that under its elective statute recovery is always under a non-maritime contract. Berry *v.* Donovan & Sons, Inc., 115 Atl. 250 (Me. 1921). See RECENT CASES, *infra*, p. 762. The court reasoned that even though the contract of employment is maritime, the election to come under the statute results in the creation of a separate contract, non-maritime in nature. The better view seems to be, however, that there is but one contract in which the provisions of the statute are implied. See cases cited in notes 6 and 13, *supra*.

[16] Thus a laborer may be hired to work generally on land but occasionally as part of his employment to aid in loading or unloading a vessel. See J. P. Chamberlain, "Legislation Now Needed to Restore Compensation to Longshoremen," 10 AM. LABOR LEGIS. REV. 242, where, however, it is assumed that the nature of the work actually being done at the time of the injury is decisive.

[17] See McBride *v.* Standard Oil Co. of N.Y., 196 App. Div. 822, 188 N.Y. Supp. 90 (1921); Riedel *v.* Mallory S.S. Co., 196 App. Div. 794, 188 N.Y. Supp. 649 (1921). A contract is non-maritime if the greater part of the service to be performed is non-maritime in nature. Riedel *v.* Mallory, *supra*; The Pennsylvania, 154 Fed. 9 (2nd. Circ., 1907).

[18] Gray *v.* New Orleans Dry Dock & Shipbuilding Co., 146 La. 826, 84 So. 109 (1920); Sullivan *v.* Hudson Navigation Co., 182 App. Div. 152, 169 N. Y. Supp. 645 (1918). (Affirmed, *sub. nom.* Anderson *v.* Johnson Lighterage Co., 224 N. Y. 539, 120 N. E. 55; Keator *v.* Rock Plaster Mfg. Co., 224 N. Y. 540, 120 N. E. 56 (1918); *certiorari* denied by the United States Supreme Court, 248 U. S. 574). *Cf.* Klamath S. S. Co.